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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CARLOS S., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS S.

Defendant and Appellant.

D074398

(Super. Ct. No. J241314)

APPEAL from a judgment of the Superior Court of San Diego County, Aaron Katz, Judge. Affirmed.

Heather L. Beugen, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Michael D. Butera, Deputy Attorneys General, for Plaintiff and Respondent.

Fifteen-year old Carlos S. lured his classmate to a secluded area, where Carlos's friend held a gun to the classmate's head and Carlos demanded that the classmate give him his money and other possessions. The juvenile court made a true finding that Carlos committed a robbery during this incident. At the dispositional hearing, the court committed Carlos to the Breaking Cycles program and then to live with his father, conditioned on various probation conditions seeking to promote Carlos's rehabilitation and a crime-free lifestyle.

Carlos's sole contention on appeal is to challenge the curfew condition as overbroad. We reject this contention and affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### *Factual Summary*

In 2018, Carlos attended high school with J. Carlos and J agreed to meet so J could buy marijuana from Carlos. When J arrived at the meeting place, Carlos showed up with his friend E. The three boys then walked to a nearby secluded trail. When the boys stopped, E got behind J, put a gun at the back of J's head, and told him to get on his knees and not to say anything or he would shoot.

After J got on his knees, Carlos stood in front of J and said, "You're getting robbed. Empty out your pockets." J was terrified and thought he would be killed. J gave Carlos \$50 from his pocket, along with his cell phone and backpack. Carlos and E walked away with the stolen items. J then went back to school and reported the incident to the principal.

### *Trial*

Following a contested hearing, the court found true the allegation that Carlos committed a robbery. But the court found the prosecution did not meet its burden to establish the firearm enhancement allegation, concluding the evidence did not show beyond a reasonable doubt that the gun used was real.

### *Sentencing*

The probation report disclosed that at the time of the offense, Carlos had run away from his father's house. Carlos was living at a friend's home with no rules or restrictions and was not regularly attending school. The year before, he had been caught stealing merchandise from a retail store and using marijuana. His school performance in the prior two years had been "abysmal." In the past semester he had an "F" in Biology, English, Math, and World History, and a "D" or "D-" in his remaining classes. In the past two years, Carlos had multiple suspensions and had been expelled from at least two schools.

His father and his father's girlfriend had made numerous attempts to control and structure Carlos's life, but Carlos had been unwilling to abide by these restrictions. During an argument with his father, Carlos grabbed a knife and displayed it to him. Carlos had also been involved in multiple fights in the community, and had requested his companions to record the fights so he could post them on social media sites. Carlos's father reported that Carlos associates with gang members, and there were social media posts showing Carlos making gang signs and holding a handgun. His father said that at

one point, Carlos had become involved in a boxing program and was being mentored by law enforcement officers, and that this was a positive influence in his life.

While he was in custody for the current offense, Carlos was involved in a physical altercation with another detainee during which Carlos acted in an out-of-control fashion. According to the probation report, Carlos "continues to make horrible choices in life," and exercises "extremely poor judgment."

At the sentencing hearing, the probation department recommended that Carlos be committed to the Breaking Cycles program for 240 days, and that Carlos's father be provided with "wraparound services" to assist him in redirecting the youth's behavior. The probation department also recommended numerous probation conditions, including a curfew condition (detailed below). The probation officer asked that the court order Carlos placed with his father, stating: "We have a father who is now very much involved. . . . [A] father who . . . appears to want structure and discipline and guidance in his house . . . ."

The prosecutor disagreed with the probation department's Breaking Cycles recommendation and argued that Carlos needs a greater custodial sanction based on his continuing serious misconduct. The prosecutor stated: "This latest true finding and his time in juvenile hall has done absolutely nothing for Carlos. As I mentioned, [he continued to engage] in gang fights [in juvenile hall]. [He is] entrenched in the criminal lifestyle, and he needs a lot of assistance and structure to quit drugs, catch up in school, stay away from these bad influences, and . . . ultimately change his life."

After the court discussed with Carlos the need to change the direction of his life, the court decided to adhere to the probation department's recommendations. Of relevance here, the court imposed a curfew restriction stating: "The minor shall be at [his] legal residence between the hours of 7:00 pm and 6:00 am unless in the company of [his] parent, legal guardian, or other adult person having legal care or custody of the minor, subject to modification at the Probation Officer's discretion. [¶] . . . The minor has an exception to curfew for verifiable school or employment, religious activities, organized sports or court-ordered programs."

During the sentencing hearing, Carlos's attorney said he had discussed the proposed probation conditions with Carlos, and did not raise any objections to any of the conditions or to the Breaking Cycles program placement.

## DISCUSSION

Carlos contends the court erred in imposing the curfew condition because it is overbroad.

### I. *Legal Principles*

"The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents." (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) When a juvenile court adjudges a minor a ward of the court and places the ward under the probation officer's supervision, "[t]he court may impose and require any and all reasonable [probation] conditions that it may determine fitting and proper to the end that justice may be done

and the reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730, subd. (b).)<sup>1</sup>

"The juvenile court has wide discretion to select appropriate [probation] conditions . . . ." (*In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*)). The court's discretion is greater than that allowed for adult probationers "because juveniles are deemed to be 'more in need of guidance and supervision than adults, and because a minor's constitutional rights are more circumscribed.' " (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910 (*Victor L.*)). Thus, a probation condition " 'that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.' " (*Sheena K.*, at p. 889.)

Generally, a probation condition will be upheld unless it " '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .' " (*People v. Lent* (1975) 15 Cal.3d 481, 486.)

Further, the juvenile court must not order conditions that are unconstitutionally overbroad. (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) A probation condition is unconstitutionally overbroad if it limits the probationer's constitutional rights and it is not closely or narrowly tailored and reasonably related to the compelling state interest in reformation and rehabilitation. (*Ibid.*; *Victor L.*, *supra*, 182 Cal.App.4th at p. 910.) "The

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.)

Generally, a juvenile court has broad discretion in selecting the probation conditions, and its determination will not be disturbed in the absence of manifest abuse. (See *In re Josh W.* (1997) 55 Cal.App.4th 1, 5.) A facial challenge to a probation condition presents a pure question of law, which is reviewed de novo. (*Sheena K., supra*, 40 Cal.4th at p. 888; *People v. Martinez* (2014) 226 Cal.App.4th 759, 765-766.)

Under these principles, "a failure to challenge a probation condition on constitutional or *Lent* grounds in the trial court waives the claim on appeal." (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033; see *Sheena K., supra*, 40 Cal.4th at p. 885; *People v. Welch* (1993) 5 Cal.4th 228, 237 (*Welch*).) This rule seeks " 'to encourage parties to bring errors to the attention of the trial court, so that they may be corrected.' " (*Sheena K.*, at p. 881.) We may nevertheless consider a facial challenge first raised on appeal when it presents a pure question of law capable of resolution " ' "without reference to the particular sentencing record developed in the trial court." ' " (*Id.* at pp. 884, 886, 887-889.)

## II. *Analysis*

Carlos contends the curfew condition is not narrowly drawn or specifically tailored to advance the court's goals of promoting his rehabilitation because "[a]s written, the curfew condition does not permit [him] to attend an after-school pep rally or a school concert that begins after 7 p.m., unless he is accompanied by a legal guardian. . . . Nor does the curfew condition permit [him] to join any after-school group that meets later than, or goes past, 7 p.m., without the presence of a legal guardian."

Carlos forfeited this challenge by not raising it in the court below. The challenge requires that we consider the facts of this case. Carlos argues that the curfew condition is not reasonably related to his rehabilitation and is overbroad because it infringes on his ability to attend "legitimate after-school activities." However, to accept this argument, we would need to review the record to determine whether (1) there are any such school activities that take place after 7:00 p.m.; (2) whether Carlos would be interested in attending those activities for lawful purposes; and, if so, (3) whether it would promote Carlos's rehabilitation to attend those activities without close adult supervision.

Even if Carlos did not forfeit the appellate argument, the challenge is unavailing on the record before us. Given Carlos's extensive history of misconduct and refusal to abide by parental and school authority, we cannot say the court abused its discretion in concluding that it would not serve Carlos's rehabilitation to be permitted to travel to and attend extracurricular activities at night without a parent or other adult supervising him.



The fact that Carlos's appellate counsel does not believe that a 15-year old would "want" a parent to be present during nighttime school activities is irrelevant to this analysis.

To the extent that Carlos argues his challenge to the probation condition is a facial challenge, the challenge is also without merit. To sustain a facial challenge, Carlos must establish that no set of circumstances exist under which the condition would be valid.

(*United States v. Salerno* (1987) 481 U.S. 739, 745.) The condition imposed in this case—that Carlos should be at home between the hours of 7:00 p.m. and 6:00 a.m. unless he is in the company of his parent, legal guardian or other adult person, with several exceptions including for "verifiable school or employment, religious activities, organized sports" and "subject to modification at the Probation Officer's discretion"—is not a condition that would be improper in every case. Restricting a minor's liberty "does not necessarily amount to [improper] confinement in the same way that it may for an adult." (*In re Walter P.* (2009) 170 Cal.App.4th 95, 101 (*Walter P.*)) A 15-year-old is at all times "subject to adult care and control."<sup>2</sup> (*Ibid.*)

This conclusion is consistent with section 725, subdivision (a), which requires the court to impose a 10:00 p.m. to 6:00 a.m. curfew condition unless "the court makes a finding and states on the record [that the] condition[] would be inappropriate . . . ." (§ 729.2.) Courts have long recognized that this rule "do[es] not . . . limit the probation

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<sup>2</sup> Carlos's reliance on Justice McDonald's concurring opinion in *In re A.G.* (2010) 186 Cal.App.4th 1454 is misplaced. (*Id.* at pp. 1468-1477.) The concurring opinion reflects an analysis of a curfew ordinance, and not a specific probation condition imposed for rehabilitative purposes on a particular juvenile offender.

conditions the juvenile court may fashion to serve the court's purpose of rehabilitation and preservation of family ties. Sections 725 and 729.2 thus serve as a floor, not a ceiling, for juvenile probation conditions." (*Walter P.*, *supra*, 170 Cal.App.4th at p. 99; *In re Jason J.* (1991) 233 Cal.App.3d 710, 719 [affirming probation condition requiring curfew from "dark" to 6:00 a.m.], disapproved on another ground by *Welch*, *supra*, 5 Cal.4th at p. 237; *In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1499, 1502 [affirming probation condition requiring 8:00 p.m. to 5:00 a.m. curfew].)

When the state asserts jurisdiction over the minor, it stands in the shoes of the parents and may curtail a child's constitutional rights as part of the parents' right to rear the child. (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242.) The curfew condition in this case appears to reflect a thoughtful and careful restriction on Carlos's rights to engage in unsupervised activities at night while he remains on probation. Carlos's appellate counsel's claim that the restriction "may actually draw him closer to the gang" has no support in the record or in common sense.

Moreover, Carlos retains at least two avenues to obtain permission to attend additional legitimate nighttime activities. First, the curfew condition explicitly grants Carlos's probation officer authority to modify its terms. We are required to presume that a probation officer will reasonably exercise this discretion and will not arbitrarily restrict a probationer's freedoms in a manner not tailored to rehabilitative or safety purposes. (*People v. Olguin* (2008) 45 Cal.4th 375, 383.)

Second, Carlos can obtain judicial review by petitioning to modify his conditions. (§ 778; see *Victor L.*, *supra*, 182 Cal.App.4th at p. 922.) The court demonstrated a willingness to be flexible by allowing exceptions to Carlos's curfew for religious activities, employment opportunities, and organized sports. Thus, if Carlos presents a specific request to attend an extracurricular activity that takes place after 7:00 p.m. that does not already fall within an exception and that his probation officer will not approve, Carlos can petition the court and explain why it would serve his best interests to do so.

#### DISPOSITION

Affirmed.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.